

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Stephen Philip CHEATLE *et al.* : Confirmation No. 8492
U.S. Patent Application No. 10/697,640 : Group Art Unit: 2622
Filed: October 31, 2003 : Examiner: Gregory Vincent Madden

For: IMAGE CAPTURE SYSTEM AND METHOD

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

By Official Action mailed *February 28, 2007*, restriction to one of the following species of the claimed invention is required:

- Species I: Figures 1A-1B
- Species II: Figures 3A-3B
- Species III: Figures 4A-4B
- Species IV: Figure 5

In response, Applicants hereby elect **Species I** (Figs. 1a-1b), upon which claims 1-5, 10, 12-15, 22-28, and 30 are readable. Claims 1, 9, 12, 22, 24, and 30 are generic.

The election is made *with traverse* because the Examiner has failed to follow proper USPTO practice and procedure.

Every requirement to restrict has two aspects:

- (A) the reasons (as distinguished from the mere statement of conclusion) why each invention as claimed is either independent or distinct from the other(s); and
- (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction. *See MPEP*, section

808 (emphasis added).

In this case, the Examiner has failed to meet at least requirement (B), i.e., **the reasons why there would be a serious burden on the examiner if restriction is not required**. The Examiner's Restriction Requirement is therefore improper and should be withdrawn or at least rephrased.

In addition, Applicants respectfully submit that Species II and IV are not restrictable, because both species are drawn to embodiments using moveable reflectors (*see* 30 in Fig. 3b and 50/54 in Fig. 5) for redirecting the image sensors' views. Thus, **both Species II and IV can be covered in single search without serious burden on the Examiner**. *See MPEP*, section 803 (If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions).

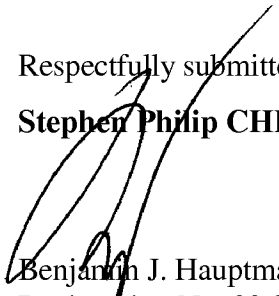
In view of the above, withdrawal of the Restriction Requirement and consideration of all claims pending in the instant application are believed appropriate and therefore courteously solicited.

Early examination on the merits is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,

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